

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

CHRISTINE EDMONDSON-JACKSON,

Plaintiff,

vs.

Case No. 08-CV-59-JHP-FHM

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

OPINION AND ORDER

The Commissioner has filed a Motion to Dismiss [Dkt. 12] asserting that the case should be dismissed because Plaintiff failed to exhaust administrative remedies. In response, Plaintiff seems to agree that the Court lacks jurisdiction under 42 U.S.C. § 405(g) but asserts:

This is not a suit asking for review of the Commissioner's denial of Social Security benefits on the merits regarding disability. It is also not a suit seeking review of the merits of the ALJ's dismissal. Rather, this is a suit alleging that Plaintiff was denied due process because the Commissioner failed to follow the agency's own procedures before determining that Plaintiff's request for hearing was not timely filed.

[Dkt. 13, p. 1]. According to Plaintiff, the issue is "whether the Commissioner violated [Plaintiff's] rights to due process under both the agency's own procedures and the requirements of the Constitution." *Id.* at 3.¹

The Commissioner did not file a reply brief, so the Court is without any indication of the Commissioner's position on the due process question. To make an informed decision

¹ The Court recognizes that Plaintiff's Complaint asserts that the action is brought under 42 U.S.C. § 405(g), prays for reversal of the denial determination, does not specify whether additional claims are brought under 42 U.S.C. § 1983 or some other provision, and does not contain a prayer related to the due process claim.

on the matter, the Court requires additional briefing addressing the Court's jurisdiction over the due process issue raised in Plaintiff's brief. [Dkt. 13].

The Commissioner is therefore directed to file a brief addressing the due process issue. That brief is due on or before the November 17, 2008. Plaintiff may file a response brief in accordance within the usual time frames for filing a response.

SO ORDERED this 9th day of October, 2008.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE